STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH M. HALEY and EMILY J. HALEY,

Plaintiffs-Appellants,

v

FRANK SALVATORE and JUDITH M. SALVATORE,

Defendants-Appellees.

UNPUBLISHED
October 30, 2003

No. 240891
Cheboygan Circuit Court
LC No. 01-006843-CH

Before: Meter, P.J., and Saad and Schuette, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a determination that they agreed to a common boundary between their property and defendants'. We affirm.

I. FACTS

This case arises from the removal of a fence that was regarded by plaintiff as the property line and boundary separating his property and defendants'. Plaintiff Joseph M. Haley[1] and his then wife, Karen Haley, bought approximately five acres on the Sturgeon River in Cheboygan County's Nunda Township by land contract on June 10, 1970. Plaintiff testified that when he first looked at the property in 1970 with Wanda Myers, the property owner, she pointed out the fence on the property's north side. He believed that the fence line was the property's northern boundary line. He took possession of the property immediately after signing the land contract in 1970.

The Haineses were plaintiff's neighbors to the north until 1975, when Jerome and Ellie Bajdek bought the property in 1975. Jerome Bajdek testified that an old fence separated his property from plaintiff's. He further testified that he treated the south side of the fence as

[1] On subsequent reference, "plaintiff" refers to Joseph M. Haley unless otherwise specified and "defendant" refers to Frank Salvatore unless otherwise specified.

plaintiff's property, and they "took it for granted" that the fence was on the boundary between the two properties. Jerome never had the property surveyed, and the fence was still standing in 1989, when the Bajdeks sold their property via land contract to the Miller brothers.

The Miller brothers, in turn, sold the property to defendants Frank and Judith Salvatore in 1990. Defendant Frank Salvatore testified that when he looked at the property, he saw the fence and was told, "what you see [is] what you get." Defendant testified that the fence was in serious disrepair when he bought the property with "the majority of it . . . down on the ground."

One of plaintiff's and defendant's first meetings was a 1991 "confrontation" prompted by what plaintiff characterized as defendant shooting into the trees on plaintiff's property. Defendant denied shooting toward plaintiff's property, but he admitted that he would not have been shooting if he knew plaintiff was there at the time. Also in 1991, plaintiff put up an electric fence, approximately three feet south of the wood fence.

In 1994, defendant had his property surveyed by Wade Trim, Inc. As a result of the survey, defendant learned that the wood fence encroached onto his property by as much as eight feet in some places and as little as one foot in others. In the spring of 1995, defendant hired Cecil Richards to remove the old fence and erect a new, "single-strand" wire fence along the survey line. When destruction of the old fence began, plaintiff called defendant and requested that he give plaintiff some time to verify the survey himself. During this call, according to defendant's testimony, plaintiff also told defendant that he had no right to remove the fence and that he did not agree to the survey line. Plaintiff contacted a surveyor, who drafted a map of the property. The map, however, did not establish that defendant's survey was correct, according to plaintiff.

Later in 1995, on Memorial Day, plaintiff and defendant met at the fence line to discuss the situation. Plaintiff testified that by the time they met, the old fence was completely gone. He testified that he told defendant that he did not believe the survey was correct and that it did not correspond to the true boundary between the properties. However, defendant's account of this discussion was different: he testified that while plaintiff questioned the surveyors' methods, by the end of the conversation, plaintiff agreed that the survey was correct.

Plaintiff testified that defendant *demanded* that plaintiff move his electric fence to allow work on defendant's new fence to proceed. Defendant, however, testified that plaintiff *agreed* to move the electric fence to allow construction on defendant's fence to continue. Plaintiff moved his electric fence some time between Memorial Day and July 4, 1995, and Richards completed work on defendant's fence, consisting of cedar posts and a single strand of wire, by the end of that summer. Defendant apparently complied with plaintiff's request that some space remain to allow both parties to maintain their fences.

Plaintiff and defendant disagreed as to when plaintiff erected a new electric fence: plaintiff testified that it was in 1999, while defendant said it was in 1998. Plaintiff constructed a new wood fence in 1999 as a "barrier from stray bullets." Plaintiff was apparently concerned because defendant and his guests were hunting with firearms too close to plaintiff's home. In the following year, defendant began construction on his own wood "privacy" fence. Plaintiff complained to defendant that the fence was being built too close to the boundary line.

Plaintiffs filed the instant complaint on May 3, 2001. Plaintiffs requested that the trial court find that the old fence line was the boundary between their property and defendants' by acquiescence. The complaint also sought to have the defendants' new wood fence removed. Following a bench trial, the trial court found that the parties agreed that the Wade-Trim, Inc., survey determined the boundary between their properties. The court dismissed plaintiffs' claims for "trespass, ejectment, and money damages." This appeal ensued.

II. STANDARD OF REVIEW

We review a trial court's findings of fact for clear error. *Chapeldaine v Sochocki*, 247 Mich App 167, 169; 636 NW2d 339 (2001). A trial court's findings "are clearly erroneous if there is no evidence to support them or there is evidence to support them but this Court is left with a definite and firm conviction that a mistake has been made." *Zine v Chrysler Corp*, 236 Mich App 261, 270; 600 NW2d 384 (1999).

III. ANALYSIS

A. Parol Agreement

Plaintiffs first argue that an acquiesced to boundary cannot be changed by parol agreement. We disagree.

Our Supreme Court has quoted the following language with approval:

> "[W]here the boundary line between two estates is indefinite or unascertained, the owners may, by parol agreement, establish a division line, and the line thus defined will afterwards control their deeds notwithstanding the statute of frauds. The principles upon which this conclusion is arrived at is, that the effect of the parol agreement is not to pass real estate from one party to another, but simply to define the boundary line to which their respective deeds extend." [*Veltmans v Kurts*, 167 Mich 412, 416; 132 NW 1009 (1911), quoting *LaMont v Dickinson*, 189 Ill 628, 637 (1901).]

This statement reflects the purpose of the acquiescence doctrine: To promote the peaceful resolution of doubts or full-fledged disputes regarding the location of boundaries. *Shields v Collins*, 83 Mich App 268, 271; 268 NW2d 371 (1978). It also indicates quite clearly that parol agreements are enforceable as a means of helping parties quell their doubts and resolve their disputes regarding boundary locations. Indeed, our Supreme Court stated that a reviewing court may find an agreement implicit in the parties' conduct in light of the surrounding circumstances. See *Daley v Gruber*, 361 Mich 358, 362; 104 NW2d 807 (1960).

B. Acquiescence

Plaintiffs next argue that acquiescence does not apply where the agreement has been in place for less than that statutory period. We disagree.

Our Supreme Court has held that where a doubt or dispute is resolved by a "good faith" agreement, "the acquiescence need not continue for the statutory period in order to establish the

line." *Hanlon v Ten Hove*, 235 Mich 227, 230; 209 NW 169 (1926). While the trial court noted that the parties' testimony conflicted regarding the content of their discussion, it properly looked to their conduct after this discussion and found that an agreement existed.

C. Remaining Issues

We decline to consider plaintiffs' arguments on appeal that were not presented below. See *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992).

Affirmed.

/s/ Patrick M. Meter
/s/ Henry William Saad
/s/ Bill Schuette